

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
Caption in Compliance with D.N.J. LBR 9004-1

Dale E. Barney, Esq.  
David N. Crapo, Esq.  
GIBBONS P.C.  
One Gateway Center  
Newark, New Jersey 07102  
Telephone: (973) 596-4500  
Facsimile: (973) 596-0545  
E-mail: [dbarney@gibbonslaw.com](mailto:dbarney@gibbonslaw.com)  
[dcrapo@gibbonslaw.com](mailto:dcrapo@gibbonslaw.com)  
Counsel for Discover Growth Fund, LLC

In re:

IMMUNE PHARMACEUTICALS, INC., *et al.*<sup>1</sup>

Debtors.

**Chapter 7**

**Case No. 19-13273 (VFP)**

**(Jointly Administered)**

**APPELLANTS' STATEMENT OF ISSUES**  
**AND DESIGNATION OF RECORD ON APPEAL**

**PLEASE TAKE NOTICE** that pursuant to Fed. R. Bankr. P. 8009, appellant Discover Growth Fund, LLC (“Appellant”), first lien secured creditor and party-in-interest in the above-captioned Chapter 7 cases (the “Case”), submits this Statement of Issues and Designation of Record on Appeal with respect to the Appellant’s appeal to the United States District Court for the District of New Jersey of the “Order Denying Without Prejudice Motion of Discover Growth Fund LLC For Relief From The Automatic Stay Pursuant to 11 U.S.C. § 362(d)”, entered by the United States Bankruptcy Court for the District of New Jersey, the Honorable Vincent F. Papalia USBJ

<sup>1</sup> The “**Debtors**” in these chapter 7 cases and the last four digits their of each Debtor’s taxpayer identification number are as follows: Immune Pharmaceutical, Inc. (1431); Immune Pharmaceuticals, Ltd.; Cytovia, Inc. (7805); Immune Oncology Pharmaceuticals, Inc.; Maxim Pharmaceuticals, Inc. (9983); and Immune Pharmaceuticals USA Corp. (9630).

presiding, (“Bankruptcy Court”) on August 19, 2020 in the Case (ECF No. 545, the “Order”). The appellees are Jeffrey A. Lester, chapter 7 trustee for the Debtors’ chapter 7 estates (“Appellee”) and the Debtors. The Official Committee of Unsecured Creditors appointed in the Case would be an appellee, but has been disbanded.

**Appellants’ Statement of Issues on Appeal**

1. Did the Bankruptcy Court err in denying, without prejudice, Appellant’s motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d), where Appellant’s minimum secured claim exceeds the approximately \$2.93 million in Appellant’s cash collateral (the “Cash Collateral”), the net proceeds of the Debtors’ sale of collateral known as the “Bertilimumab” assets, that is presently held by counsel to the Debtors?

2. Did the Bankruptcy Court err by determining that Appellant’s interests as secured creditor of Debtor Immune Pharmaceuticals, Inc. are adequately protected by the Cash Collateral in the Debtors’ counsel’s escrow and the Appellee’s control?

3. Did the Bankruptcy Court err in determining that the value of Discover’s collateral “arguably” increased as a result of the Bertilimumab sale when compared to the value that would have been realized had Discover been granted stay relief at an early stage in the Case?

4. Did the Bankruptcy Court err in not determining that Discover has a minimum secured claim in the amount of the \$2 million advanced to Debtor Immune Pharmaceuticals, Inc. under the parties’ loan documents, plus interest, attorneys’ fees and costs in an amount to be determined?

5. Did the Bankruptcy Court err and abuse its discretion in denying Discover’s motion for relief from the automatic stay due to the pendency of the adversary proceeding captioned *Lester v. Discover Growth Fund, LLC*, Adv. Pro. No. 19-02033, in which Appellee challenges the extent and validity of Discover’s lien?

**Appellants' Designation of Record on Appeal**

Date	Docket Description	CM/ECF Dkt. # <sup>2</sup>
02/25/2019	Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay (#11-1 Exh 1, Proposed Order; #11-2 Exh 2, Statement of Amount Due; #11-3 Exh 3, Declaration of John C. Kirkland in Support of Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay; #11-4 Exh 3 Continuation of previous document.)	11
02/25/2019	Certificate of Service of Discover Growth Fund, LLC.	12
03/19/2019	Reservation of Rights of iCo Therapeutics Inc. Regarding the Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay.	64
03/19/2019	Declaration of Anthony Fiorino in Support of the Debtors' Opposition to the Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay (#67-1 Memorandum of Law of the Debtors in Opposition to the Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay; #67-2 Certificate of Service.)	67
03/19/2019	Objection of the Official Committee of Unsecured Creditors to the Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay.	68
03/22/2019	Reply to Debtors' and Unsecured Creditors' Committee's Opposition to the Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay (#77-1 Reply Declaration of John C. Kirkland in Further Support of Discover Growth Fund, LLC's Motion for Relief from the Automatic Stay and in Opposition to Debtors' Motion on Shortened Notice to Sell the Ceplene Product Line, Pursuant to 11 U.S.C. § 363 (b) and (f); #77-2 Exh 1; #77-3 Exh 2; #77-4 Exh 3; #77-5 Exh 4; #77-6 Exh 5; #77-7 Exh 6.)	77
03/29/2019	Transcript regarding Hearing Held 03/26/19 (related document: <u>11</u> Motion for Relief From Stay filed by Creditor Discover Growth Fund, LLC.)	101
08/20/2019	Scheduling Order regarding Discover Growth Fund, LLC'S Motion for Relief from the Automatic Stay (related document: <u>11</u> Motion for Relief From Stay filed by Creditor Discover Growth Fund, LLC.)	295
08/20/2019	Notice of Hearing 10/09/2019 (related document: <u>11</u> Motion for Relief From Stay filed by Creditor Discover Growth Fund, LLC.)	296
10/09/2019	Hearing Rescheduled from 10/9/2019 (related document(s): <u>11</u> Motion for Relief From Stay filed by Discover Growth Fund, LLC) Hearing scheduled for 03/24/2020	N/A
01/21/2020	Amended Scheduling Order regarding Discover Growth Fund, LLC's Motion for Relief from Stay	362

<sup>2</sup> Reference to each respective docket entry includes all attachments accompanying that entry.

Date	Docket Description	CM/ECF Dkt. # <sup>2</sup>
03/12/2020	Supplemental Memorandum in Further Support of Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay (#374-1 Declaration of John C. Kirkland in Further Support of Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay.)	374
03/12/2020	Supplement to Debtors Opposition to Discover Growth Fund, LLC Motion for Stay Relief [sic]	375
03/12/2020	Supplemental Objection of the Official Committee of Unsecured Creditors to the Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay.	376
03/13/2020	Certificate of Service of Discover Growth Fund, LLC.	377
03/16/2020	Certificate of Service of Immune Pharmaceuticals, Inc.	379
03/22/2020	Hearing Rescheduled from 3/24/2020 (related document(s): <u>11</u> Motion for Relief From Stay filed by Discover Growth Fund, LLC) Hearing scheduled for 04/01/2020	N/A
03/26/2020	Discover Growth Fund, LLC's Letter reply to Debtors and Unsecured Creditors Committee's Supplemental Briefs on Discover Growth Fund, LLC's Motion for Relief from Stay.	387
03/26/2020	Reply of the Debtors and Official Committee of Unsecured Creditors to the Supplemental Brief of Discover Growth Fund, LLC to its Motion for Relief from the Automatic Stay [sic].	390
04/02/2020	Order Granting Motion to Convert Case to Chapter 7 Pursuant to 11 U.S.C. § 1112(b)	400
04/03/2020	Notice of Appointment of Trustee-Jeffrey A. Lester appointed Chapter 7 Trustee.	401
04/06/2020	Transcript regarding Hearing Held 04/01/20.	409
04/13/2020	Certificate of Service of Discover Growth Fund, LLC.	413
05/26/2020	Trustee's Opposition to Motion by Discover Growth Fund, LLC for Relief from the Automatic Stay (#470-1 through #470-5 – Exhibits.)	470
05/29/2020	Discover Growth Fund, LLC's Letter reply to Trustee's Opposition to Discover Growth Fund, LLC's Motion for Relief from Stay	483
05/31/2020	Hearing Rescheduled from 6/2/2020 (related document(s): <u>11</u> Motion for Relief From Stay filed by Discover Growth Fund, LLC) Hearing scheduled for 06/16/2020	N/A
06/01/2020	Certificate of Service of Discover Growth Fund, LLC.	490
06/15/2020	Hearing Rescheduled from 6/16/2020 (related document(s): <u>11</u> Motion for Relief From Stay filed by Discover Growth Fund, LLC) Hearing scheduled for 06/23/2020	N/A
06/23/2020	Minute of Hearing Held, OUTCOME: Denied, Order to be Submitted (related document(s): <u>11</u> Motion for Relief From Stay filed by Discover Growth Fund, LLC)	N/A

Date	Docket Description	CM/ECF Dkt. # <sup>2</sup>
07/06/2020	Transcript regarding Hearing Held 06/23/20 (related document:11 Motion for Relief From Stay filed by Creditor Discover Growth Fund, LLC, 389 Motion to Expunge/Reduce/Modify/Object to Claims filed by Creditor Committee Official Committee of Unsecured Creditors).	525
08/19/2020	Order Denying Without Prejudice Motion of Discover Growth Fund, LLC for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d).	545

Dated: September 15, 2020  
Newark, New Jersey

**GIBBONS P.C.**

By:   
Dale E. Barney

*Counsel for Discover Growth Fund, LLC*